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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,945	07/25/2003	Bryan Scott	19017.00011	3225

7590 01/09/2008
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EXAMINER

MCCORMICK, GABRIELLE A

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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01/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/626,945

Applicant(s)

SCOTT ET AL.

Examiner

Gabrielle McCormick

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☒ Claim(s) 25 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the application filed on July 25, 2003.
2. Claims 1-36 are currently pending and have been examined.

Claim Objections

3. Claim 25 is objected to for failing to end in a period.
4. Claim 29 is objected to for the misspelling of the word, contract, in line 19 (currently, the claim recites "... a contact labor provider.").

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-24, 27-30, 32 and 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claims 1 and 16 are system claims that contain the method step of "contract labor provider providing at least one contract labor employee". It is unclear as to the subject matter the claims are directed toward, i.e., a process (method) or a machine (system). Dependent claims 2-15 and 17-18 are similarly rejected.
8. Claim 17 recites the limitation "the data management system" in lines 12 and 13. There is insufficient antecedent basis for this limitation in the claim.
9. Claim 18 recites the limitations "the data storage system" in line 17 and "the data retrieval system" in lines 18-19. There is insufficient antecedent basis for these limitations in the claim.

- Claim 18 also recites that a job site can access data. It is unclear how a location or building is capable of performing the acts of accessing data through a data retrieval system.
10. Claim 19 recites a "contract labor management system method" (preamble of claim 19), the first half of the body of the claim discusses the specifics of the system while the second half details method steps. It is unclear whether the claim is directed toward a method or a system. Claim 20 recites the "contract labor management method of claim 19". As discussed above, claim 19 is unclear as to whether it is a method or system claim, therefore, it is unclear how claim 20 can depend from the just the method of claim 19. Claims 21-24 are rejected through there dependency from claims 19 and 20.
11. Claims 27 – 29 recite the receipt of "a contract labor data element result". It is unclear whether this is a second, third and fourth contract labor data element result.
12. Claims 27-30 and 32 are vague and indefinite for failing to provide a complete thought following the term, "wherein". It is unclear what the receiving and reporting actions are intended to accomplish. Therefore it cannot be ascertained whether the wherein clauses are used in these claims to further limit the claims.
13. Claim 34 also recites the limitation, "a data retrieval system for displaying a formatting contract labor data requests." It is unclear whether it is intended to display one request or a plurality. Further, it is unclear whether the word "formatting" is a misspelling of formatted. In other words, it is unclear whether the requests are for formatting or the requests are for contract labor data results.
14. Claims 35 and 36 are rejected due to their dependency from claim 34.

Claim Rejections - 35 USC § 101

15. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title".

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16. Claims 1-18 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.
17. Claims 1 and 16 are system claims that recite limitations of "a subscriber", "contract labor provider", "a data aggregation service provider" and "a data collection service provider". These entities can be interpreted to include people (in the form of employees or owners of companies) therefore, claims 1 and 16 are interpreted to claim people as parts of a system. People are not statutory subject matter and cannot be claimed in a system claim. Furthermore, the step of the "contract labor provider providing at least one contract labor employee" is a method step. This causes the applicant's claims to embrace or overlap two different statutory classes of invention as set forth in 35 USC 101. "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).
18. Claims 2-15 and 17-18 are rejected due to their dependency from claims 1 and 16.
19. Claims 19-24 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.
20. 35 USC 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added). Applicant's claims mentioned above are intended to embrace or overlap two different statutory classes of invention as set forth in 35 USC 101. Claim 19 begins by discussing a "contract labor management system method" (preamble of claim 19), the first half of the body of the claim discusses the specifics of the system while the second half details method steps. "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", Ex parte Lyell (17 USPQ2d 1548).
21. Claims 20-24 are rejected due to their dependency from claim 19.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

19. **Claims 1, 6-8 and 16-19** are rejected under 35 U.S.C. 102(b) as being anticipated by Wong et al. (US Pub. No. 2001/0049615 hereafter referred to as "Wong").

20. **Claim 1:** Wong discloses a system for managing the collaboration of clients, contractor, recruiters and staffing suppliers. (para. [0009]). Specifically, Wong discloses:

- *a subscriber (client 106) having at least one contract labor provider (staffing supplier 104) providing at least one contract labor employee (contractor 102) to at least one subscriber job site (para. [0023]: client is located at a "site").*
- *a data aggregation service provider having a data collection system that collects contract labor data elements for at least one subscriber; (Figure 2: examples of data elements include the "Skill Requirements", "Work Order", "Risk Management" and "Digital Portfolio").*
- *a data collection service provider that collects contract labor employee data elements for a data aggregation service provider. (Figure 2: examples of data elements include the "Skill Requirements", "Work Order", "Risk Management" and "Digital Portfolio").*

21. **Claims 6-8:** Wong discloses data management (para. [0021]: skills procurement platform provides management of contract resources); data storage and retrieval (para. [0096]).

22. **Claim 16:** Wong discloses a system for managing the collaboration of clients, contractor, recruiters and staffing suppliers. (para. [0009]). Specifically, Wong discloses:

- *a subscriber (client 106) having at least one contract labor provider (staffing supplier 104) providing at least one contract labor employee (contractor 102) to at least one subscriber job site (para. [0023]: client is located at a "site").*

- *a data aggregation service provider having a data collection system that collects contract labor data elements for at least one subscriber; (Figure 2: examples of data elements include the "Skill Requirements", "Work Order", "Risk Management" and "Digital Portfolio").*
 - *a data collection service provider that collects contract labor employee data elements for a data aggregation service provider (Figure 2: examples of data elements include the "Skill Requirements", "Work Order", "Risk Management" and "Digital Portfolio").*
 - *the data aggregation service provider automatically collects contract labor data elements from a data collection service provider. (para. [0088]: hiring managers review and approve work journals that automatically update the digital portfolio of the contractor.)*
23. **Claim 17:** Wong discloses automatic searches (para. [0045]: by automatically searching for individuals to contract work, data elements are provided).
24. **Claim 18:** Wong discloses accessibility to data by a client (i.e., subscriber), staffing supplier (i.e., contract labor provider) in Fig. 1.
25. **Claim 19:** Wong discloses a system for managing the collaboration of clients, contractor, recruiters and staffing suppliers. (para. [0009]). Specifically, Wong discloses:
- *a subscriber (client 106) having at least one contract labor provider (staffing supplier 104) providing at least one contract labor employee (contractor 102) to at least one subscriber job site (para. [0023]: client is located at a "site").*
 - *a data aggregation service provider having a data collection system that collects contract labor data elements for at least one subscriber; (Figure 2: examples of data elements include the "Skill Requirements", "Work Order", "Risk Management" and "Digital Portfolio").*
 - *a data collection service provider that collects contract labor employee data elements for a data aggregation service provider (Figure 2: examples of data elements include the "Skill Requirements", "Work Order", "Risk Management" and "Digital Portfolio")*
 - *automatically collecting contract labor employee data elements from the data collection service provider, (para. [0088]: hiring managers review and approve work journals that automatically update the digital portfolio of the contractor.)*

- *automatically notifying at least one subscriber, contract labor provider, data collection service provider, or job site the status of a contract labor employee data element.* (para. [0053]: a requestor (i.e., client) is notified of the status of searching).

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. **Claims 2-5 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US Pub. No. 2001/0049615 hereafter referred to as "Wong") in view of Employeescreen.com (pages documented from the Internet Archive from June 1, 2002 at <http://webarchive.org/web/20020208120037/employeescreen.com/services/index.html> and <http://webarchive.org/web/20020208120037/employeescreen.com/services/packages.html>)
28. **Claims 2, 3, 4, 5 and 15:** Wong discloses performing blood testing (para. [0050]) and background checks (para. [0054]) on contractors. Wong does not explicitly disclose drug testing, federal criminal record checks, trade certifications or commercial vehicle licenses or a drug and alcohol testing company.
29. Employeescreen.com discloses drug screening, federal criminal searches, technical license verification (pg. 3) and education verification, including certificates (pg. 1). It is inherent that drug screening is performed by a drug and alcohol testing company.
30. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included explicit recitation of the details of background checking and blood testing, as disclosed by Employeescreen.com in the system disclosed by Wong, for the

motivation of providing a method of pre-qualifying a contractor for work and monitor rules and regulations compliance (Wong; para. [0054]).

31. **Claims 9-14 and 20-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US Pub. No. 2001/0049615 hereafter referred to as "Wong").
32. **Claims 9-14:** Wong discloses that skills are procured in regards to a specific industry where skills "can be listed individually, classified by type, or job role. Wong does not disclose specific types of contracted employees such as where an *employee is qualified to work at an oil installation, operate heavy machinery at a chemical installation, operates a natural gas line at a gas well, manages the process of dehydrating sludge, operates a semi on an interstate highway, or manages the assembly of automobiles for an automobile manufacturer.*
33. However, these differences are only found in the **nonfunctional descriptive data** and are not functionally involved in the steps recited. **The provision of the contract labor employee to the subscriber would be performed regardless of position title.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
34. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included specific job positions because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of a job position does not patentably distinguish the claimed invention.
35. **Claims 20-24:** Wong discloses that notification is performed by a dashboard of metrics that can be defined with custom workflow and notification sequences to notify the executive when events occur. (para. [0072]). Both standardized and custom reports are provided. Customized ad hoc reports can be created to satisfy specific needs. (para. [0073]). It is obvious that during ad hoc report generation, data is queried. The transferring and receiving of formatted data is inherent in report generation.

36. **Claims 25-36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US Pub. No. 2001/0049615 hereafter referred to as "Wong") in view of Frank et al. (US Pub. No. 2002/0143595 hereafter referred to as "Frank").
37. **Claim 25:** Wong discloses a risk management component to monitor compliance with government rules and regulations. (para. [0054]). Specifically, Wong discloses:
- *adapting a database to monitor a contract labor data element;* (Fig. 1; "Data" 130 and "Contractor" 102 and para. [0068]: the contractor records time sheets in the work journal and track activities and progress).
 - *monitoring a contract labor data element for at least one contract labor employee to create a contract labor data element result;* (para. [0068]: the hiring manager approves timesheet data and provides performance rating information; the result is approved time sheets (the worker gets paid) and a comprehensive project report).
 - *reporting the status of the contract labor data element result;* (para. [0071]: companies are able to manage, measure, and analyze the performance and costs of their contractors through data mining and para. [0073]: standard and customized reports are provided).
38. Wong does not disclose that the data element is related to a regulation.
39. Frank, however, provides a method for compliance management that "allows the monitoring and measuring of a variety of task performances at the facility to ensure compliance with regulations and standards." (para. [0025]).
40. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included identifying data related to a regulation, as disclosed by Frank, in the system disclosed by Wong, for the motivation of complying with government rules and regulations. (Wong; para. [0054]).
41. **Claim 26:** Wong discloses blood testing of contract workers, (para. [0050]) but not drug tests.
42. Frank discloses drug testing during incident investigation. (para. [0042]).

43. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included drug testing, as disclosed by Frank, in the system disclosed by Wong, for the motivation of ascertaining whether a worker has a drug abuse problem that could impact the ability of the worker to perform the job safely.
44. **Claims 27-29:** Wong discloses receiving data results as a result of a background check (i.e., data collection service provider- para. [0054]), from a client (i.e., someone located at a job site; para. [0068]: hiring manager provides feedback and approves time sheets), and from staffing suppliers (i.e., contract labor provider - para. [0062]).
45. **Claim 30:** Wong discloses registration, including a user name and password. (para. [0028]).
46. **Claims 31-32:** Wong discloses reporting results to a client (i.e., a subscriber located at a job site) (para. [0073]).
47. **Claim 33:** Wong discloses using the work journal to capture, approve and report worker time sheet and performance data. (para. [0068]). The work journal serves as the data collection service provider.
48. **Claim 34:** Wong discloses *receiving contract labor data elements* (para. [0058]) *and transmitting contact labor data requests* (para. [0046]); *querying and formatting contract labor data elements and contract labor data requests* (para. [0063]); *storing contact labor data elements* (para. [0096]); and *displaying a formatting contract labor data requests* (para. [0046]: the approved work order is a document which is inherently displayed.)
49. **Claims 35 and 36:** Wong discloses reporting (para. [0073]). Wong does not disclose regulatory reports for a state or federal agency.
50. Frank, however, discloses determining whether a governmental agency or regulatory body needs to be notified and sends the appropriate forms (para. [0063]).
51. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included formatting regulatory reports for a government agency, as disclosed by Frank, in the system disclosed by Wong, for the motivation of maintaining compliance with government rules and regulations. (Wong; para. [0054]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is 571-270-1828. The examiner can normally be reached on Monday - Thursday (6:00- 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gabrielle McCormick
Patent Examiner
Art Unit 3629



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